

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes, regulations and directives involved	2
Statement	2
Argument	6
Conclusion	14
Appendix	15

CITATIONS

Cases:

<i>Armour & Co. v. Bowles</i> , 148 F. 2d 529, certiorari denied, 325 U. S. 871	3, 9
<i>Armour & Co. v. Reconstruction Finance Corp.</i> , 162 F. 2d 918	9
<i>Atlantic Meat Co., Inc. v. Reconstruction Finance Corp.</i> , 166 F. 2d 51, certiorari denied, 329 U. S. 737	7, 13
<i>Ben H. Rosenthal & Co., Inc. v. Porter</i> , 158 F. 2d 171, certiorari dismissed on petitioner's motion, 330 U. S. 802	9
<i>Bowles v. American Brewery</i> , 146 F. 2d 842	13
<i>Bowles v. Superior Packing Co.</i> , 63 F. Supp. 12, affirmed, 156 F. 2d 193, certiorari denied, 329 U. S. 788	13
<i>Cummings v. Deutsche Bank</i> , 300 U. S. 115	12
<i>Dodge v. Board of Education</i> , 302 U. S. 74	11, 12
<i>Dowling Bros. Distilling Co. v. United States</i> , 153 F. 2d 353, certiorari denied sub nom. <i>Gould v. United States</i> , 328 U. S. 848, rehearing denied, 329 U. S. 820	13
<i>Frisbie v. United States</i> , 157 U. S. 160	12
<i>Earl C. Gibbs, Inc. v. Defense Supplies Corp.</i> , 155 F. 2d 525, certiorari denied, 329 U. S. 737	3, 6-7, 9, 10
<i>Greenhouse Bros. & Finkelstein, Inc. v. Reconstruction Finance Corp.</i> , 331 U. S. 812	7
<i>Illinois Packing Co. v. Henderson</i> , 329 U. S. 783, rehearing denied, 329 U. S. 831	7
<i>Illinois Packing Co. v. Snyder</i> , 151 F. 2d 337	9, 10, 11
<i>Lynch v. United States</i> , 292 U. S. 571	12
<i>Maricopa County v. Valley Bank</i> , 318 U. S. 357	12
<i>Pennie v. Reis</i> , 132 U. S. 464	12
<i>Salt Co. v. East Saginaw</i> , 13 Wall. 373	11
<i>Samett v. Reconstruction Finance Corp.</i> , certiorari denied, 334 U. S. 812	7, 13
<i>Superior Packing Co. v. Clark</i> , 164 F. 2d 343	13

II

	Page
<i>Swift & Co. v. Reconstruction Finance Corp.</i> , E. D. Ill. unreported but set forth in Petition, pp. 20-33	12
<i>Taub v. Bowles</i> , 149 F. 2d 817, certiorari denied, 326 U. S. 732	13
<i>United States v. Bethlehem Steel Corp.</i> , 315 U. S. 289	12
<i>United States v. Charney</i> , 50 F. Supp. 581	13
<i>United States v. Teller</i> , 107 U. S. 64	12

Statutes:

Act of June 30, 1945, Sec. 1, 59 Stat. 306	4
Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 765; 58 Stat. 632; 59 Stat. 306; 60 Stat. 664; 50 U.S.C. App. 902:	
Sec. 2(e)	3, 4, 11, 15
Sec. 2(m)	12
Price Control Extension Act of 1946, 60 Stat. 664	4
Sec. 6(a) (4)	6, 8, 16
Reconstruction Finance Corporation Act, Sec. p. 4, 15 U.S.C. 606b	4

Miscellaneous:

Amendment No. 4, Revised Maximum Price Regulation 239, 8 F.R. 7679	3
Amendment No. 5, Revised Maximum Price Regulation 148, 8 F.R. 7671	3
Amendment No. 15, Revised Maximum Price Regulation 169, 8 F.R. 7675	3
Amendment No. 64, Supplementary Order No. 132, 11 F.R. 12093	5
89 Cong. Rec. 7194	9
90 Cong. Rec. 5296, 5297	9
91 Cong. Rec. 5224-5231, 5237	9
92 Cong. Rec. 8461-8462	10
Directive 41, Amendment No. 5, 11 F.R. 7042	8
Directive 41, Amendment No. 6, 11 F.R. 7043	8
Executive Order 9328, 8 F.R. 4681	3, 9
Hearings, Subcommittee of Senate Committee on Agri- culture & Forestry, 79th Cong., 2d sess. on S. Res. 92 (1946), 9-11, 79	10
Hearings, Senate Committee on Banking and Currency, 79th Cong., 2d sess. on S. 2028 (1946), 1237-1238	10
Hyman and Nathanson, <i>Judicial Review of Price Con- trol; The Battle of the Meat Regulations</i> , 42 Ill. Law Review 584	3
Regulation No. 3, 8 F.R. 10826, 10829	4
Amendment No. 6, 10 F.R. 11155	4

III

	Page
Regulation No. 3:	
Sec. 7003.4(b) (c), 10 F.R. 4242	8
Sec. 7003.5(b), 8 F.R. 10827	7
Sec. 7003.5(b) (2), 8 F. R. 10827	7
Sec. 7003.8, 10 F.R. 4243	8
Sec. 7003.10(a), 8 F.R. 10829	7
Regulation No. 10	5, 8
Sec. 7010.1	17
Sec. 7010.2	18
Sec. 7010.3	18
Announcement No. 1	5, 10, 20
11 F. R. 9138 (Reimposition of maximum selling prices) .	5
11 F.R. 9373 (Meat control regulations)	5
11 F.R. 9375 (Reestablishment of meat subsidy program) .	5
12 F. R. 66 (Expiration of Regs. Nos. 3 and 10)	4
Supreme Court Rule 38, par. 5(b)	5, 12

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 248

THE WM. SCHLUDERBERG-T. J. KURDLE Co.

v.

RECONSTRUCTION FINANCE CORPORATION

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES EMERGENCY COURT OF APPEALS**

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Emergency Court of Appeals (R. 62-70) is not reported.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on July 29, 1948 (R. 71). The petition for a writ of certiorari was filed on August 27, 1948. The jurisdiction of this Court is

invoked under Section 204(d) of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 31, 50 U.S.C. App. 924(d)), making applicable Section 240 of the Judicial Code, as amended (now 28 U.S.C. 1254).

QUESTION PRESENTED

Whether the Emergency Court of Appeals properly affirmed Reconstruction Finance Corporation's refusal to pay subsidies on meat which was produced from livestock slaughtered while price controls were in effect but which was sold after such controls were removed.¹

STATUTES, REGULATIONS AND DIRECTIVES INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended (50 U.S.C. App. 901 *et seq.*), and of the controlling regulations and directives are set forth in the Appendix, *infra*, pp. 15-22.

STATEMENT

This suit was instituted by a complaint filed December 1, 1947, in the United States Emergency Court of Appeals, seeking review of respondent's

¹ The petitioner's question and specification of error concerning the alleged invalidation of respondent's Regulations Nos. 10 and 3 by the Emergency Court of Appeals (Pet. 2, 7, 11, 12, 13, 15) evidently misconceives the effect of that court's opinion. It simply held that the regulations were to be read, as contended by respondent, so as not to ignore the well-established condition authorizing meat subsidy payments only where the meat products, for which subsidies were being claimed, were sold under price control (R. 62-70).

denial of petitioner's subsidy claims² for meat slaughtered from September 1 through October 14, 1946, but remaining in petitioner's terminal inventory for sale at uncontrolled prices after the end of meat price controls on October 15, 1946 (R. 47-54).

The origin of this suit, though not revealed in the transcript, is readily apparent from the official records of the emergency subsidy program.³ The basic authority for institution of subsidy payment programs is found in Section 2(e) of the Emergency Price Control Act of 1942 (50 U.S.C. App. 902(e)), Appendix, *infra*, pp. 15-16. Such subsidy payments were found necessary with respect to meat products in June 1943. At that time, in order to implement the President's hold-the-line policy (E.O. 9328, 8 F.R. 4681), the Office of Price Administration reduced the maximum permissible selling prices on meat products approximately 10 per cent.⁴ This reduction was compensated for by

² Although petitioner claimed, and respondent initially denied, \$16,161.75 for subsidies allocable to terminal inventory (R. 27), respondent subsequently authorized the exclusion from terminal inventory of those items which never entered into a subsidy credit computation since they had been acquired and slaughtered by petitioner during the decontrolled period of July and August, 1946 (R. 46).

³ For a complete account of the origin, purposes and mechanics of the meat subsidy program, see *Armour & Co. v. Bowles*, 148 F. 2d 529, 532-534 (E.C.A.), certiorari denied, 325 U. S. 871; *Earl C. Gibbs, Inc. v. Defense Supplies Corp.*, 155 F. 2d 525, 526-529 (E.C.A.), certiorari denied, 329 U. S. 737; Hyman and Nathanson, *Judicial Review of Price Control; The Battle of the Meat Regulations*, 42 Ill. Law Review 584.

⁴ Amendment No. 15, Revised Maximum Price Regulation 169, 8 F. R. 7675; Amendment No. 5, Revised Maximum Price Regulation 148, 8 F. R. 7671; Amendment No. 4, Revised Maximum Price Regulation 239, 8 F. R. 7679.

the meat subsidy program put into effect as of June 7, 1943, by Regulation No. 3 of the Defense Supplies Corporation (8 F.R. 10826, 10829).⁵ Upon the dissolution of the Defense Supplies Corporation on July 1, 1945,⁶ Regulation No. 3, as subsequently amended and revised, was taken over by respondent (Amendment No. 6, Regulation No. 3, 10 F.R. 11155). Regulation No. 3 continued in effect until June 30, 1946,⁷ when, as a result of the termination of the Emergency Price Control Act of 1942, price controls lapsed and the authority to continue subsidy programs, including that set up by Regulation No. 3, expired (12 F.R. 66).

On July 25, 1946, the Price Control Extension Act of 1946 became law (60 Stat. 664). Pursuant to its authority under that Act, the Price Decontrol Board, on August 22, 1946, authorized the reimposition of maximum selling prices on meat products and the reestablishment of the meat subsidy pro-

⁵ The Defense Supplies Corporation, a corporation organized under Section 5b of the Reconstruction Finance Corporation Act (15 U.S.C. 606b) and therefore qualified to pay subsidies under Section 2(e) of the Emergency Price Control Act of 1942 (50 U.S.C. App. 902(e)), on meat products defined by the President to be strategic and critical materials, was directed on May 7, 1943, to put the meat subsidy program in operation so as to "reimburse [meat packers and wholesalers] for the reduction in ceiling prices". (For text of this May 7, 1943, directive, see Appendix, *infra*, pp. 18-20).

⁶ The Act of June 30, 1945 (59 Stat. 310), which took effect July 1, 1945, transferred to respondent the authority, functions, and property of the Defense Supplies Corporation.

⁷ Section 1 of the Act of June 30, 1945 (59 Stat. 306) continued the Emergency Price Control Act of 1942 into effect until June 30, 1946.

gram (11 F.R. 9138). Accordingly, the Price Administrator issued regulations making the various meat price controls effective September 1, 1946 (11 F.R. 9373) and the Director of Economic Stabilization directed respondent to reestablish the meat subsidy program (11 F.R. 9375). Respondent then issued its Regulation No. 10, providing that meat subsidy payments would be made, effective September 1, 1946, in accordance with all the terms and conditions of former Regulation No. 3 (see Appendix, *infra*, pp. 17-18). The restored meat price controls were in effect only through October 14, 1946 (Amendment No. 64, Supplementary Order No. 132, 11 F.R. 12093), when meat subsidy Regulation No. 10 also expired (12 F.R. 66).

On March 31, 1947, and before payment of any subsidies due petitioner for the period from September 1 to October 14, 1946, had been made, respondent issued its Announcement No. 1 (see Appendix, *infra*, pp. 20-22), declaring in effect that no subsidies were to be paid with respect to meat held in inventory at the close of business on October 14, 1946, since such meat was sold at uncontrolled prices (R. 30).⁸ Despite the provisions of this Announcement, petitioner, on October 6, 1947, filed a protest demanding of respondent subsidy payments for its October 14, 1946, inventory (R.

⁸ To the extent subsidies allocable to such inventories had already been paid, which was not the situation in the instant case, the Announcement directed their "recapture" subject to certain limitations (R. 30).

1-7). The protest was denied by respondent on November 4, 1947 (R. 27).⁹

Petitioner then filed its complaint in the Emergency Court of Appeals on December 1, 1947, assailing the validity of Announcement No. 1 and respondent's action in deducting from petitioner's meat subsidy claims those subsidies allocable to its terminal inventory (R. 47-54). Respondent's answer alleged, *inter alia*, that Announcement No. 1 was authorized and required by the inherent correlation between the meat subsidy and the price control programs, by the provisions of Section 6(a)(4) of the Price Control Extension Act of 1946 (60 Stat. 671, see Appendix, *infra*, pp. 16-17), and in order to prevent the unjust enrichment of slaughterers (R. 54-58). The Emergency Court of Appeals sustained the validity of Announcement No. 1 as well as the validity of respondent's deduction of terminal inventory subsidies from petitioners' subsidy claims, and accordingly dismissed the complaint (R. 62-71).

ARGUMENT

The decision of the Emergency Court of Appeals is clearly correct, does not present any conflict, and, we submit, does not require review by this Court.¹⁰

⁹ This denial was modified by respondent on March 2, 1948 (R. 46). See footnote 2, *supra*, p. 3.

¹⁰ This Court has already denied certiorari in the five other cases brought to it concerning the meat subsidy program. *Earl*

1. The gist of petitioner's attack on the judgment below is that the failure of the original meat subsidy regulations to state, in express terms, that meat subsidies are to be paid only with respect to meat sold during a period when price controls were in effect, vested in it a contractual right to subsidy payments for meat sold after prices were decontrolled. Petitioner further argues that Announcement No. 1 retrospectively destroys such vested rights.

a. The conclusive answer to petitioner's argument is, as set forth by the court below, that under the law and apart from the absence of any such written condition in the meat subsidy regulations,¹¹ the right to claim subsidies on account of livestock

C. Gibbs, Inc. v. Defense Supplies Corp., 329 U. S. 737; *Atlantic Meat Co., Inc. v. Reconstruction Finance Corp.*, 329 U. S. 737; *Illinois Packing Co. v. Henderson*, 329 U. S. 783, rehearing denied, 329 U. S. 831; *Greenhouse Bros. & Finkelstein, Inc. v. Reconstruction Finance Corp.*, 331 U. S. 812; *Samett v. Reconstruction Finance Corp.*, 334 U. S. 812.

¹¹ Regulation No. 3, which was incorporated by reference into Regulation No. 10 (see Appendix, *infra*, p. 17), had provided for the payment of subsidies on the basis of the weight of the livestock slaughtered during the accounting period for which subsidies were claimed (Section 7003.5(b), 8 F. R. 10827), but did not state, *in haec verba*, that the meat products derived from such slaughter must be sold during a period while price controls were in effect. The Regulation did, however, specifically authorize the invalidation of claims, in whole or in part, wherever the subsidy claimant was certified to have violated any meat product maximum price regulation (Sec. 7003.10(a), 8 F. R. 10829). The Regulation also expressly prohibited subsidy payments for the live weight equivalent of the subsidy applicant's production of condemned meat (Sec. 7003.5(b)(2), 8 F. R. 10827), and specifically required that deductions from subsidy payments be made where

slaughtered during the period September 1, 1946, to October 14, 1946, was always subject to the inherent condition that the meat derived from such slaughter "must be disposed of prior to the removal of price controls" (R. 70).

That this was a condition precedent to the payment of subsidy moneys is evident from the express limitation made on subsidy payments by the Price Control Extension Act of 1946 (60 Stat. 664). Section 6(a)(4) of that Act (60 Stat. 671, see Appendix, *infra*, pp. 16-17) which prohibited subsidy operations for any commodity for any period after July 25, 1946 "during which maximum prices on such commodity are not in effect," and constituted a Congressional reassertion of the well-known fundamental basis of the meat subsidy and the other subsidy programs, *i.e.*, subsidy payments would not be made where prices had been decon-

the applicant exceeded the price ranges established for the various grades of cattle (Sec. 7003.8, 10 F. R. 4243), or failed to set aside or deliver the meat required for Government procurement (Directive 41, Amendment No. 5, 11 F. R. 7042). Other provisions of the Regulation authorized respondent to invalidate the claim of any applicant who refused to keep such records as respondent required in substantiation of any subsidy claim (Sec. 7003.4(b)(c), 10 F. R. 4242), and also authorized the withholding of subsidies where the claimant failed to furnish information requested of it by the Office of Price Administration (Directive 41, Amendment No. 6, 11 F. R. 7043). Regulation No. 10 also provided that the regulation should terminate automatically "on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat." It is fair to say that if the disposal under price controls of the meat to be subsidized was not an express condition of the subsidy regulation, it was necessarily implied in that regulation.

trolled.¹² This necessary tie-up between subsidies and ceiling prices is forcefully manifested by the express purpose of inauguration of the meat subsidy program to compensate slaughterers for the 10% reduction in the maximum prices of beef ordered in June 1943, as part of the President's hold-the-line policy (E.O. 9328, 8 F. R. 4681).¹³ The need of such subsidies to relieve the "squeeze" between high livestock prices and low meat ceilings in which slaughterers were caught, and the propriety of conditioning the receipt of the subsidy upon compliance with those price regulations¹⁴ which the subsidy was designed to supplement and support, has been consistently recognized by the courts. *Armour & Co. v. Reconstruction Finance Corp.*, 162 F. 2d 918, 922 (E.C.A.); *Ben H. Rosenthal & Co., Inc. v. Porter*, 158 F. 2d 171, 172 (E.C.A.), certiorari dismissed on petitioner's motion, 330 U. S. 802; *Armour & Co. v. Bowles*, 148 F. 2d 529, 532, 534 (E.C.A.), certiorari denied, 325 U. S. 871; *Earl C. Gibbs, Inc. v. Defense Supplies Corp.*, 155 F. 2d 525, 526 (E.C.A.), certiorari denied, 329 U. S. 737; *Illinois Packing Co. v. Snyder*, 151 F. 2d 337, 339 (E.C.A.). And the meat industry itself, despite petitioner's assertions, has recorded its understanding of the complete

¹² For other Congressional awareness of the subsidy-price control relationship, see 89 Cong. Rec. 7194; 90 Cong. Rec. 5296, 5297; 91 Cong. Rec. 5224-5231, 5237.

¹³ See footnote 5, *supra*, p. 4.

¹⁴ See provisions of respondent's meat subsidy regulations described in footnote 11, *supra*, p. 7.

integration of meat subsidies with price controls. Hearings, Subcommittee of Senate Committee on Agriculture and Forestry, 79th Cong., 2d sess. on S. Res. 92 (1946), 9-11, 79; Hearings, Senate Committee on Banking and Currency, 79th Cong., 2d sess. on S. 2028 (1946), 1237-1238; 92 Cong. Rec. 8461-8462.

In view of this close tie-up and the well-established and legally-implied condition necessarily requiring disposal of meat under price control in order to be eligible for subsidy payments, we submit that the failure to set forth this condition in express terms in the meat subsidy regulations is immaterial and should not be allowed to inure to the benefit of petitioner, which was able to sell the meat, for which it claims subsidy, in a market freed of all price controls.¹⁵ Accordingly, since Announcement No. 1 did no more than redeclare this already existing condition, it cannot possibly be viewed as having any retrospective effect.

b. Moreover, in assuming that a claim for payment of a Government subsidy is "property" protected by the due process clause of the Fifth Amendment (Pet. 16-17), petitioner overlooks the fact that Section 2(e) of the Emergency Price

¹⁵ Petitioner's allegations (Pet. 10) that even though the market was a free one it voluntarily sold its meat at prices no higher than those formerly fixed under price control is of no legal significance in determining the validity of Announcement No. 1 or respondent's action thereunder. See opinion of court below at footnote, R. 69. Cf. *Earl C. Gibbs, Inc. v. Defense Supplies Corp.*, 155 F. 2d 525, 531-532 (E.C.A.), certiorari denied, 329 U. S. 737; *Illinois Packing Co. v. Snyder*, 151 F. 2d 337, 339 (E.C.A.).

Control Act (50 U. S. C. App. 902(e), see Appendix, *infra*, p. 15), in authorizing subsidy programs, was never intended to create any contractual or vested rights in potential beneficiaries of subsidy programs. Section 2(e) merely sets forth a policy to be pursued by the administrative agencies effectuating the purposes of price control legislation, and may not, therefore, be viewed as conferring any contractual rights. Cf. *Dodge v. Board of Education*, 302 U. S. 74.

It is, of course, true that meat subsidies compensated slaughterers by enabling them to receive, in effect, a greater price for their meat products than that prescribed by the applicable price regulations.¹⁶ The Emergency Court of Appeals, in assuming jurisdiction over suits assailing the validity of meat subsidy regulations, has accordingly ruled these subsidies not to be absolute gratuities or bounties. *Illinois Packing Co. v. Snyder*, 151 F. 2d 337, 339 (E.C.A.). It has never ruled, however, that the claim for subsidy payment may be denominated a contract or property right,¹⁷ nor would

¹⁶ See, *supra*, pp. 3-4.

¹⁷ The holding of this Court in *Salt Co. v. East Saginaw*, 13 Wall. 373, relied on by petitioner (Pet. 17), has no application here. The opinion in that case simply held (1) that a Michigan statute, exempting from property taxation all corporations and individuals engaged in that State in the manufacture of salt from water, did not constitute a contract between the State and a corporation which was induced to rely on the statute's benefits, (2) that the corporation had no vested right to continued exemption from taxation despite such reliance, and, (3) that therefore the statute, declared by public policy and the general good, could be repealed by the State at will. The dicta in the *Salt Co.* case, with respect to

such a holding, we submit, be consistent with this Court's constant rejection of other attempts to fashion contractual rights out of legislative policy declarations. See *Dodge v. Board of Education*, *supra*; *Cummings v. Deutsche Bank*, 300 U. S. 115, 122-124; *Maricopa County v. Valley Bank*, 318 U. S. 357, 362; *United States v. Teller*, 107 U. S. 64, 68; *Pennie v. Reis*, 132 U. S. 464; *Frisbie v. United States*, 157 U. S. 160, 166.

2. The conflict of decisions alleged to exist between the decision of the Emergency Court of Appeals and *Swift & Co. v. Reconstruction Finance Corp.*, (E. D. Ill., unreported, but set forth in Petition, pp. 20-33), is not the type of conflict which merits review in this Court. Supreme Court Rule 38, par. 5(b).

Furthermore, even if the tentative conclusions expressed in the *Swift & Co.* opinion should not be reversed by the District Court before it enters final judgment in that case which is still actively pending before it, it is clear that the District Court was without jurisdiction to entertain the suit. The District Court assumed jurisdiction under Section 2(m) of the Emergency Price Control Act of 1942

bestowing the promised bounty "upon those who earn it" (13 Wall. 377), also furnishes no support to petitioner's argument since, as already indicated, petitioner's failure to meet the essential condition of sale of the meat under price control rendered it ineligible for the subsidy. Equally inapplicable are the other cases cited by petitioner, *Lynch v. United States*, 292 U. S. 571, and *United States v. Bethlehem Steel Corp.*, 315 U. S. 289, both of which admittedly involved express, written contracts with the Government.

(50 U.S.C. App. 902(m)) which is limited to cases involving payment of sums relating to the production or sale of agricultural commodities. However, the meat subsidy regulations and Announcement No. 1, involved in the *Swift & Co.* opinion as well as in the instant case, provide for subsidy payments on meat products manufactured in whole or substantial part from agricultural commodities. These meat products are derived from, but are not themselves agricultural commodities. *Atlantic Meat Co., Inc., v. Reconstruction Finance Corp.*, 166 F. 2d 51 (C.C.A. 1), certiorari denied, 329 U. S. 737; *Superior Packing Co. v. Clark*, 164 F. 2d 343, 348, 349 (E.C.A.); *Bowles v. Superior Packing Co.*, 63 F. Supp. 12, 16-17 (D. Minn.), affirmed, 156 F. 2d 193 (C.C.A. 8), certiorari denied, 329 U. S. 788; *United States v. Charney*, 50 F. Supp. 581, 583 (D. Mass.); see also, *Dowling Bros. Distilling Co. v. United States*, 153 F. 2d 353, 358 (C.C.A. 6), certiorari denied *sub nom. Gould v. United States*, 328 U. S. 848, rehearing denied, 329 U. S. 820; *Taub v. Bowles*, 149 F. 2d 817, 823 (E.C.A.), certiorari denied, 326 U. S. 732; *Bowles v. American Brewery*, 146 F. 2d 842, 845 (C.C.A. 4). And this Court has only recently denied certiorari in a similar situation where it was contended that the District Courts have jurisdiction to pass on the validity of meat subsidy regulations in a proceeding to review respondent's denial of a meat subsidy payment. *Samett v. Reconstruction Finance Corporation*, certiorari denied, 334

U. S. 812. The opinions of the District Court in the *Swift & Co.* case, in the present posture of that litigation, are, therefore, of no controlling significance and furnish no basis for a conflict warranting review here.

CONCLUSION

The decision below is correct and there exists no conflict. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Assistant Attorney General.

PAUL A. SWEENEY,
MORTON HOLLANDER,
Attorneys.

SEPTEMBER 1948.

APPENDIX

1. The pertinent provisions of Section 2(e) of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765; 58 Stat. 632; 59 Stat. 306; 60 Stat. 664; 50 U.S.C. App. 902(e)), provide as follows:

Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided*, That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provision of this Act or of any existing law, such commodity may be bought or sold, or stored or used, and

such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d * * *.

2. The pertinent provisions of Section 6(a)(4) of the Price Control Extension Act of 1946 (60 Stat. 664, 671) provide as follows:

Sec. 6 (a) The last paragraph of section 2 (e) of the Emergency Price Control Act of 1942, as amended by the Stabilization Extension Act of 1944, shall not apply with respect to operations for the fiscal year ending June 30, 1947, of the Commodity Credit Corporation and the Reconstruction Finance Corporation: *Provided*, That with respect to such corporations and such operations, the making of subsidy payments and buying for resale at a loss shall be limited as follows:

Payments and purchases may be made with respect to operations for the fiscal year ending June 30, 1947, which involve subsidies and anticipated losses as follows:

(4) With respect to noncrop programs, 1946 crop program operations and the 1947 crop program operations relating to sugar, flour, petroleum, petroleum products, and other domestic and imported materials and commodities, \$869,000,000: *Provided*, That the operations authorized under this subparagraph (4) shall be progressively reduced, shall be terminated not later than April 1, 1947, and shall not cost more than \$629,000,000 during the last six months of the calendar year 1946.

Operations shall not be carried out under authority of this subparagraph (4) with respect to any commodity for any period occurring after the date of the enactment of this Act during which maximum prices on such commodity are not in effect under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended: *Provided*, That subsidies with respect to petroleum produced from stripper wells shall be continued at not to exceed the existing rates. No subsidy or purchase and sale operation shall be undertaken under authority of this subparagraph (4) with respect to any commodity unless a subsidy or purchase and sale operation with respect to such commodity was in effect on June 29, 1946; and no such operation shall be undertaken under authority of this subparagraph (4) which will increase the rate of subsidy paid or the rate of loss incurred with respect to any commodity above that which would be paid or incurred if the operations in effect on June 29, 1946, had been continued on the same basis.

3. Regulation No. 10, Reconstruction Finance Corporation, provides:

Section 7010.1. Reconstruction Finance Corporation shall make payments to eligible slaughterers on cattle, calves, hogs and pigs slaughtered on and after September 1, 1946, in accordance with all the terms and conditions of Livestock Slaughter Payments, Revised Regulation No. 3 of Reconstruction Finance

Corporation, as amended by Amendments No. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

Section 7010.2. Revised Regulation No. 3 of Reconstruction Finance Corporation and Amendments No. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 thereto are made a part of this regulation.

Section 7010.3. This regulation shall terminate automatically, without regard to the ten day notice provision of Section 7003.12 of Revised Regulation No. 3, on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat.

This regulation shall become effective September 1, 1946. Issued this 28th day of August, 1946.

STUART K. BARNES,
Executive Director,
Office of Defense Supplies.

4. The May 7, 1943 letter to the Defense Supplies Corporation reads as follows:

THE SECRETARY OF COMMERCE
Washington

SEAL

May 7, 1943.

DEAR MR. MULLIGAN:

The Price Administrator has issued instructions reducing the ceiling prices on beef, veal, pork, lamb, mutton, coffee, and butter by approximately 10%. I am advised that this action was taken with the full approval of the Director of Economic Stabilization.

I have received a letter from the Director of Economic Stabilization stating that this reduction in ceiling prices will substantially decrease the production of the commodities referred to above unless the Government pays to packers and wholesalers the amounts by which the ceiling prices have been reduced. An estimate of the aggregate amount of money necessary to make these payments for a year is \$450,000,000.

The Director of Economic Stabilization, pursuant to Executive Order No. 9250, has directed me to cause one of the corporations organized under Section 5d of the Reconstruction Finance Corporation Act, as amended, to make payments to packers and wholesalers of these commodities in such manner as will reimburse them for the reduction in ceiling prices. I therefore make the following findings pursuant to Section 2(e) of the Emergency Price Control Act of 1942:

1. The maximum necessary production of beef, veal, pork, lamb, mutton, coffee, and butter may not be obtained during the ensuing year unless subsidies are paid to packers and wholesalers of these commodities.

2. It is necessary in order to assure the maximum necessary production for Defense Supplies Corporation to subsidize the packers and wholesalers in such amounts as may from time to time be determined by me to be necessary to reimburse them for the reduction in ceiling prices.

Will you please request Defense Supplies Corporation to take the necessary action to put this into effect.

Sincerely yours,

(S.) JESSE H. JONES,
Secretary of Commerce.

I approve:

(S.) FDR.

MR. H. A. MULLIGAN,
President,
Defense Supplies Corporation,
Washington, D. C.

5. Announcement No. 1 Under Regulation No. 10 of Reconstruction Finance Corporation provides:

The volume of meat held in inventories by slaughterers at the close of business on October 14, 1946 (the date of termination of price controls on meat) was substantial, and such inventories were, of course, sold thereafter at uncontrolled prices. The Office of Temporary Controls has determined that in view of the provisions of Section 6(a)(4) of the price Control Extension Act of 1946 and in order to avoid unjust enrichment of packers at the expense of the Government, subsidies allocable to these inventories should be recaptured. Operation of the plan is as follows:

I. De Minimis Cases. Because of the disproportionate administrative burden in relation to the potential amounts involved, the Government will not attempt to recapture such subsidies in the case of slaughterers who furnish

information to the RFC showing that they did not slaughter in excess of 500,000 pounds total live weight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods. A form for the use of slaughterers falling in this class is attached hereto (RFC Form No. DSC 117). Such slaughterers must complete and file this form with RFC before April 30, 1947, unless they elect to have invalidated their September and October 1946 meat subsidy claims whether paid or unpaid. On receipt of the completed form showing slaughter of not more than a total of 500,000 pounds live weight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods, RFC will pay any amounts otherwise due on the September and October 1946 claims.

II. Large Slaughters. With respect to slaughterers who slaughtered in excess of 500,000 pounds during the May-June-September period the amount to be recaptured will be based on the amount of meat held in inventory at the close of business October 14, 1946, unless they elect to settle instead by foregoing their total subsidies for September and October 1946. A form to be used by such slaughterers in reporting their inventories or for the purpose of making this election will be furnished as soon as copies are available. Until the form is available, no further September and October subsidy payments can be made to any slaughterer in this category unless he had no

inventory of meat or meat products at the close of business October 14, 1946.

With respect to all slaughterers, large or small, who have already received the September-October subsidy, if their cases are not settled pursuant to the procedures provided herein, they will be referred to the Department of Justice.

Issued this 31st day of March, 1947.

STUART K. BARNES,
Executive Director,
Office of Defense Supplies.